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August 7, 2001

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room Number TWB-204
445 12th Street, S.W.
Washington, DC, 20554

RECEIVED

AUG - 7 2001

FEDERAL COMMUNICATIONS
OFFICE OF THE SECRETARY

Re: VZ Section 272 Compliance Biennial Audit Report, CC Docket No. 96-150

Dear Ms. Salas:

The attached letter from Aryeh Friedman, Senior Attorney, AT&T and addressed to Hugh L. Boyle, Chief, Audits Branch, FCC was hand-delivered to all addressees today.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Joan Marsh".

Joan Marsh

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August 7, 2001

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AUG - 7 2001

VIA HAND DELIVERY

Hugh L. Boyle
Chief, Audits Branch
Federal Communications Commission
445 12th Street, S.W.
Washington, DC, 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Verizon Section 272 Compliance Biennial Audit Report in CC Docket No. 96-150

Dear Mr. Boyle:

On behalf of AT&T Corp., I request access for myself and other necessary personnel (such as an in-house statistician and/or accountant) to the information redacted from the Reports of Independent Accountants on Applying Agreed-Upon Procedures, prepared by PricewaterhouseCoopers LLP and filed on June 11, 2001 ("Auditor's Initial Biennial Report") and June 18, 2001 ("Auditor's Supplemental Biennial Report") (collectively the "Section 272 Biennial Reports"). Any individuals granted such access will, of course, sign a Confidentiality Order, if it is deemed necessary to do so.¹ Finally, I request an extension of time of up to thirty (30) days from the date that access is first granted to review the material redacted from these Reports, to comment on the material redacted. Indeed, it would be preferable if the time to submit all comments in this proceeding were extended to the same date inasmuch as comments on the redacted version of the Section 272 Biennial Reports will, by definition, be only partial and incomplete.

¹ Appended hereto is a proposed Confidentiality Order, based on the Order adopted by the Commission in the Qwest Merger proceeding. Order Adopting Protective Order, *Qwest Communications International Inc. and U S West, Inc. Applications for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License* (March 27, 2000).

It is not clear that the redactions in the Section 272 Biennial Reports are either proper or sustainable.² In any event, critical information relating to apparent violations of various Section 272 requirements has been redacted, limiting the ability of AT&T and others to respond meaningfully to the Commission's request for comments. For example, data necessary to evaluate the extent of Verizon's violation of the following Sections 272 requirements was redacted:

- *Section 272(e)(1) -- Discrimination in Fulfillment of Requests for Telephone Exchange and Exchange Access Requirement:* The Auditor's Initial Biennial Report redacts information about Verizon's performance on six measurements related to this requirement (see, Appendix A, Tables 14a through 14c at 35-38, and Tables 15-16 at 40-41 redacting data on the Section 272 affiliates). Verizon makes the bald, unsupported statement that discrepancies between performance measurements for its affiliates and third parties are "statistically meaningless" for provisioning and repair intervals, "relatively small and immaterial" for PIC change intervals, and "consistent with expected sampling error" for FOC differences. (See, Verizon's Response to Section 272 Audit Report ("Verizon's Response") at 6-7.). Without access to the affiliate data, AT&T and others will have no meaningful opportunity to comment on the materiality or statistical significance of Verizon's violations. Significantly, the Auditor's Supplemental Biennial Report redacted similar information (see, Appendix F, Table 24 at 32-35).
- *Section 272(e)(2) -- Discrimination in the Provision of Facilities, Services, or Information Concerning Exchange Access:* The Auditor's Initial Biennial Report redacts critical information that indicated non-compliance with this requirement (see, Appendix A, Table 17, redacted in its entirety at 44). Again, AT&T and others need access to the redacted information to be able to comment on the plausibility of Verizon's proffered explanation. (Verizon's Response at 7-8.).
- *Section 272(e)(3) -- Discrimination in Amount charged for Access to Telephone Exchange and Exchange Access:* The Auditor's Initial Biennial Report redacts critical information about whether Verizon imputed to itself the same amount for exchange access as Verizon charges unaffiliated entities (see, Appendix A, Tables 18 and 19 at 48). Without this information, AT&T and others cannot meaningfully comment on the findings or on the plausibility of Verizon's Response thereto, which is itself redacted.
- *Section 272(b)(5) Affiliate Transactions Obligations:* The Auditor's Initial Biennial Report redacted information about: (a) whether the transactions were

² Indeed, it is even doubtful that some of information designated as proprietary -- e.g., the number of employees employed by the affiliates, or the listing of services rendered by unaffiliated companies -- is proprietary in the first place. See, Appendix A to the Auditor's Initial Biennial Report at 3-4; Appendix C to the Auditor's Supplemental Biennial Report at 4.

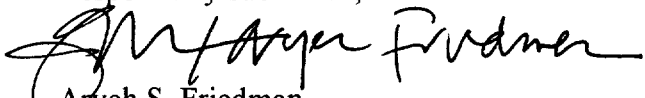
properly recorded in the books of the BOC or ILEC in terms of Fully Distributed Costs ("FDC") or Fair Market Value ("FMV") as required by the affiliate transactions standards (see, Appendix A, Tables 9-10 at 21-23, FDC information redacted and Appendix F to the Auditor's Supplemental Biennial Report at 23); (b) transactions where the Section 272 affiliate was charged an amount other than FDC or FMV (id, Table 11 at 23-24, amount charged redacted); and (c) fourteen fixed assets that may have been transferred from the BOC to its affiliates although management claims that it could not locate invoices (id, Table 12 at 26; critical data about those assets redacted). Without access to the redacted information, AT&T and others will not be in a position to comment on Verizon's alleged response to each of these apparent violations (see, Verizon's Response at 5-6). Indeed, even certain of Verizon's responses to the apparently numerous Section 272 violations are redacted.

- *Section 272(c)(1) – Nondiscrimination:* The Auditor's Supplemental Biennial Report redacted information about differences in rates, terms and conditions for services (including inside wiring installation and repair, capacity services, operator services, voice messaging services, and miscellaneous blanket services) that were purchased by both affiliated and non-affiliated entities. (See, Appendix F, Table 21 at 28). Significantly, Verizon's explanations are also redacted. (Id. at 29.). AT&T and others need access to the redacted information to comment on Verizon's conduct.

Masking from the public the very information needed to evaluate Verizon's compliance with Section 272 undermines both the letter and spirit of the audit requirements imposed by Section 272(d).

Thank you for your attention to this matter. You may direct any questions to the undersigned.

Respectfully submitted,


Aryeh S. Friedman

cc: Timothy Peterson
Anthony Dale

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Verizon Section 272 Compliance)	CC Docket No. 99-272
Biennial Audit Report)	

PROPOSED ORDER

Adopted:

Released:

1. Pursuant to section 272, PricewaterhouseCoopers LLP filed redacted and non-redacted Reports of Independent Accountants on Applying Agreed-Upon Procedures on June 11, 2001 ("Auditor's Initial Biennial Report") and June 18, 2001 ("Auditor's Supplemental Biennial Report"). The Common Carrier Bureau issued a Public Notice seeking public comments on these reports on June 21, 2001.

2. AT&T filed a letter dated August 7, 2001 wherein it requested access, subject to a Protective Order, to the unredacted versions of these Reports in order to more meaningfully address the matters therein. AT&T further requested an extension of time of up to thirty (30) days from the date access is first given to the non-redacted versions of these Reports, to comment on them. AT&T appended to its letter a proposed Protective Order which is appended hereto as Exhibit A.

3. The Common Carrier Bureau has reviewed AT&T's letter and any opposition thereto and has concluded that AT&T's request for access subject to the attached Protective Order and its further request for an extension of time is justified.

4. Accordingly, IT IS ORDERED that AT&T's request for access subject to the attached Protective Order and for an extension of time of thirty (30) days from the date access is first given to the non-redacted versions of these Reports, to comment on them is GRANTED.

Chief, Common Carrier Bureau
Federal Communications Commission

Exhibit A

PROTECTIVE ORDER

1. Pursuant to section 272, PricewaterhouseCoopers LLP (“the Auditor”) filed redacted and non-redacted Reports of Independent Accountants on Applying Agreed-Upon Procedures on June 11, 2001 (“Auditor’s Initial Biennial Report”) and June 18, 2001 (“Auditor’s Supplemental Biennial Report”) (“collectively “the Reports”). The Common Carrier Bureau issued a Public Notice seeking public comments on these reports on June 21, 2001. The Commission has concluded that to the extent these Reports contain proprietary or confidential information, the unredacted versions should be made available pursuant to a protective order. Consequently, the Common Carrier Bureau enters this Protective Order to ensure that the information considered by Verizon, Verizon’s Section 272 affiliates and other third parties to be confidential and proprietary are afforded protection. This Protective Order does not constitute a resolution of the merits concerning whether any confidential information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (FOIA) or otherwise.

2. *Non-Disclosure of Redacted Information.* Except with the prior written consent of the party who has the right to claim that specific information redacted by the Auditor (“Confidential Information”) is proprietary or confidential (the “Submitting Party”), or as hereinafter provided under this Protective Order, the redacted material in the Reports may not be disclosed by a reviewing party to any person. “Redacted Material” shall mean any information marked “proprietary” in the redacted versions of the Reports to signify that it contains information that the Auditor (based on conversations with the Submitting Party) believes should be subject to protection under FOIA and the Commission’s implementing rules unless the Commission determines, *sua sponte* or by petition, pursuant to Sections 0.459 or 0.461 of its rules that any such information is not entitled to confidential treatment.

3. *Permissible Disclosure.* Subject to the requirements of paragraph 5, the non-redacted version of the Reports may be reviewed by outside counsel of record and in-house counsel who are actively engaged in the conduct of this proceeding, provided that those in-house counsel seeking access are not involved in competitive decision-making, *i.e.*, counsel’s activities, association, and relationship with a client that are such as to involve counsel’s advice and participation in any or all of the client’s business decisions made in light of similar or corresponding information about a competitor. Subject to the requirements of paragraph 5 and subject to the obligation to secure the non-redacted version of the Reports in accordance with the terms of this order, such counsel may disclose non-redacted version of the Reports to: (i) the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this proceeding; (ii) Commission officials involved in this proceeding; (iii) outside or in-house consultants or experts retained for the purpose of assisting counsel in these proceedings; (iv) employees of such counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling data connected with this proceeding; and (v) employees of

third-party contractors performing one or more of these functions. The Auditor shall make available for review the non-redacted version of the Reports by mailing a copy to counsel authorized to review such material under this Section.

4. *Access to Confidential Documents.* Persons described in paragraph 3 shall have the obligation to ensure that access to the non-redacted version of the Reports is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure: (i) that the non-redacted version of the Reports are used only as provided in this order; and (ii) that the non-redacted version of the Reports are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 7.

5. *Procedures for Obtaining Access to the Non-redacted Version of the Reports.* In all cases where access to the non-redacted version of the Reports is permitted pursuant to paragraph 3, and before reviewing or having access to the non-redacted version of the Reports, each person seeking such access shall execute the Acknowledgment of Confidentiality (see Appendix A) to the Commission and to the Auditor; the Auditor shall immediately send a copy of this Acknowledgement to the Submitting Party or Parties by certified mail, return receipt requested, so that it is received by the Auditor seven business days prior to such person's reviewing or having access to the non-redacted version of the Reports. Each Submitting Party shall have an opportunity to object to the disclosure of that portion of the non-redacted version of the Reports that contains its confidential or proprietary information to any such Party. Any objection must be filed at the Commission and served on counsel representing, retaining or employing such person within five business days after the Auditor receives a copy of that person's Acknowledgment of Confidentiality. Until any such objection is resolved by the Commission and any court of competent jurisdiction prior to any disclosure, and unless that objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to the relevant portion of the non-redacted version of the Reports.

6. *Requests for Additional Disclosure.* If any person requests disclosure of the non-redacted version of the Reports outside the terms of this Protective Order, such requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

7. *Use of Confidential Information.* Persons described in paragraph 3 may, in any documents that they file in this proceeding, reference information found in the non-redacted version of the Reports or derived therefrom (hereinafter, "Confidential Information"), but only if they comply with the following procedure:

- a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;
- b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;
- c. Each page of any party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: "CONFIDENTIAL – NOT FOR

PUBLIC INSPECTION – SUBJECT TO PROTECTIVE ORDER IN CC Docket No. 96-150”
and

d. The confidential portion(s) of the pleading shall be served upon the Secretary of the Commission and any party that is authorized to review this information under the Protective Order. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File. A party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Parties may provide courtesy copies under seal of pleadings containing Confidential Information to Commission staff.

8. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by any Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information by a Submitting Party shall not be deemed a waiver of any privilege or entitlement as long as the Submitting Party takes prompt remedial action.

9. *Subpoena by Courts or Other Agencies.* If a court or another administrative agency subpoenas or orders production of Stamped Confidential Documents or Confidential Information that a party has obtained under terms of this order, such party shall promptly notify the Auditor, who shall immediately notify each affected Submitting Party, by certified mail, return receipt requested, of the pendency of such subpoena or order. Consistent with the independent authority of any court or administrative agency, such notification must be accomplished such that the Submitting Party has a full opportunity to oppose such production prior to the production or disclosure of that portion of the non-redacted version of the Reports or pleadings or filings herein that contains its confidential or proprietary information.

10. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of the non-redacted version of the Reports provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not disclose the non-redacted version of the Reports or Confidential Information.

11. *Violations of Protective Order.* Persons obtaining access to the non-redacted version of the Reports or Confidential Information under this order shall use the information solely for preparation and the conduct of this proceeding as delimited in paragraphs 4, 7, and 10, and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such information for any other purpose, including business, governmental, commercial, or other administrative, regulatory or judicial proceedings. Should a party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that party shall immediately convey that fact to the Commission and to the Auditor, who shall in turn inform the affected Submitting Party. Further, should such violation consist of

improper disclosure of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order.

12. *Prohibited Copying.* If, in the judgment of the Auditor, after consultation with the Submitting Party, a redacted segment of the reprot contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited," and no copies of that redacted segment, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to the Auditor who shall, in turn, provide appropriate notice to the affected Submitting Party.

13. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding (which includes any administrative or judicial review), the non-redacted version of the Reports and all copies of same shall be returned to the Auditor. No material whatsoever derived from the non-redacted version of the Reports may be retained by any person having access thereto, except counsel to a party in this proceeding (as described in paragraph 3) may retain, under the continuing strictures of this Protective Order, two copies of pleadings containing confidential information prepared on behalf of that party. All counsel of record shall make certification of compliance herewith and shall deliver the same to the Auditor not more than three weeks after conclusion of this proceeding.

14. *Authority.* This Order is issued pursuant to Sections 4(i), 214(a), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214(a), and 310(d), Section 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Section 0.321 of the Commission's rules, 47 C.F.R. § 0.321, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Chief, Common Carrier Bureau

Appendix A

ACKNOWLEDGEMENT OF CONFIDENTIALITY

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding and I understand it. I agree that I am bound by this Order and that I shall not disclose or use documents or information designated as "CONFIDENTIAL INFORMATION" or any information gained therefrom except as allowed by the Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as counsel or consultant to a party or other person described in paragraph 3 of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the order.

Executed at _____ this ____ day of _____, 2000.

Signature

Title